

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-08-90023 - 01-08-90028

BEFORE

Lipez, and Howard, Circuit Judges
McAuliffe, Smith, and Woodcock, District Judges

ORDER

ENTERED: MAY 26, 2009

Petitioner, a pro se litigant, has filed a petition for review of Judge Selya's order dismissing his complaints of judicial misconduct, under 28 U.S.C. § 351(a), against three circuit judges, two district judges, and a magistrate judge, respectively. The petitioner originally alleged judicial misconduct in connection with three district court proceedings, as well as with his appeal of the first of these cases. Because these complaints were filed together and concerned the same underlying matters, Judge Selya reviewed them concurrently.

The petitioner originally alleged that the magistrate judge improperly delayed issuing a decision in the first of the petitioner's cases and that the magistrate judge's decision neglected to reflect the "key evidence" before the court. The petitioner asserted that the magistrate judge "[p]ossibly had discussions with other parties and council [sic] and [the] clerk of court"

The petitioner next alleged that the charged appellate judges improperly delayed issuing a ruling in the appeal of this case. He added that the circuit judges wrongfully denied the

petitioner's request to reopen the matter, despite the fact that it had been voluntarily dismissed and the petitioner had provided proof that he suffers from a mental illness.

The petitioner then charged that the district judge, who presided over the petitioner's second proceeding (which the petitioner had filed against the magistrate judge who had handled his first proceeding), "possibly had discussions with appeals clerks." Lastly, the petitioner contended that the other district judge failed properly to exercise jurisdiction over the petitioner's third case, and neglected to identify a complaint as required by Rule 11. The petitioner submitted miscellaneous documentation, including copies of court orders from his cases, his birth certificate, school records, dictionary pages, and copies of records reflecting the petitioner's previous employment with the defendant in his initial case.

Judge Selya dismissed the complaint. Judge Selya first noted that the petitioner's assertion concerning the district judge's alleged obligation to identify a complaint under Rule 11 presumably pertained to Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct). Judge Selya explained that, while this rule discusses, in part, judicial misconduct complaints identified by the chief judge of the circuit, it had no bearing on the present matter.

Based upon his review of the case dockets, Judge Selya then summarized the chronology of the petitioner's proceedings, as follows. The petitioner filed the first of his cases, an employment discrimination proceeding, in 2004. The case was originally referred for Alternative Dispute Resolution (ADR) but the ADR Report indicated that the petitioner did not appear for the scheduled mediation conference. Thereafter, the case was transferred, with the parties' consent, to the magistrate judge charged in the present matter who held a two-day bench trial in

2007.

Several months after the trial, the magistrate judge issued a ten-page decision recounting the petitioner's history of employment with the defendant and the legal standards applicable to his claims of employment discrimination. Although the court accepted the petitioner's contention that he suffered from a disability under the law, it determined that the petitioner had failed to establish employment discrimination under the Americans with Disabilities Act (ADA).

Judge Selya observed that the petitioner's dissatisfaction with the result of his appeal of this decision provided the basis for his allegations of misconduct against the circuit judges. The petitioner filed a notice of appeal in late 2007, and the Court of Appeals issued a briefing schedule. After the parties filed their briefs, the petitioner filed a motion to withdraw the case. The court ordered the case voluntarily dismissed in early 2008.

Judge Selya reported that the petitioner subsequently filed multiple motions and letters seeking to reopen the appeal which the presiding panel denied. The court held that "no basis appears to relieve [the petitioner] of his decision to withdraw his appeal." Thereafter, the petitioner filed numerous additional letters requesting that his case be reopened which the court also denied. The panel further ordered the petitioner to "refrain from filing further motions or letter[s] . . . as the appeal is over"

Judge Selya observed that, meanwhile, the petitioner had filed two civil rights cases: one against the magistrate judge, in early 2008, over which the first of the two charged district judges presided, and another later in the year, to which the other district judge was assigned. With regard to the first of these cases, the district judge issued a nine-page order summarizing the petitioner's allegations against the magistrate judge and dismissing the claims as barred by

judicial immunity.

Judge Selya explained that the other district judge subsequently issued a thirteen-page decision dismissing the petitioner's remaining case. The court described the petitioner's previous litigation and his current claim that the court had erroneously concluded that judicial immunity barred his claims against the magistrate judge. After a comprehensive analysis of the applicable legal principles, the district judge determined that the petitioner had failed to raise cognizable claims of constitutional violations by a legitimate party and, because he was effectively attempting to relitigate his dissatisfaction with the magistrate judge's original rulings, dismissed the case with a warning that the petitioner's continued filing of further related pleadings or cases would result in the imposition of sanctions.

Judge Selya determined that the reviewed records demonstrated that the misconduct complaints were merely a further attempt by the petitioner to reassert his dissatisfaction with the courts' rulings. Judge Selya noted that the petitioner provided no information suggesting that any of the charged judicial officers exhibited bias, engaged in improper ex parte communications, or harbored any illicit animus in connection with the petitioner's cases. To the contrary, Judge Selya observed that the trial transcript of the two-day jury trial before the magistrate judge indicated that the magistrate judge sought to ensure that the petitioner, as a pro se litigant, was afforded the opportunity to present his case in full before issuing a comprehensive analysis of the petitioner's claims.

Judge Selya further explained that, on the present facts, the Court of Appeals was not legally or ethically obligated to allow the petitioner to reopen his case. Accordingly, Judge Selya concluded that the court's decisions in this regard were not remotely suggestive of judicial

wrongdoing. Judge Selya also observed that the orders issued by the district judges were devoid of any suggestion of judicial animus. As the complaints and the reviewed court records provided no evidence in support of the petitioner's charges, Judge Selya dismissed the complaints pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Because there was no evidence of bias or other illicit judicial motivation, Judge Selya also determined that the petitioner's disagreement with the courts' orders did not provide a cognizable basis for a complaint of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B). As there was no suggestion of judicial animus or a pattern of neglect, the allegations of delay were also not cognizable. See Rules of Judicial Misconduct, Rule 3(h)(3)(B).

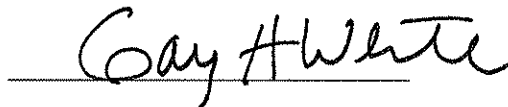
The petition for review reiterates the petitioner's original allegations and contains miscellaneous documentation. The submitted documents include: a copy of Judge Selya's order of dismissal with certain words circled and notes in the margins; a document entitled "Absent Evidence - Transcript 100 observations" that contains nonsensical phrases and apparent excerpts from a transcript; copies of correspondence to the petitioner from the Circuit Executive's Office relating to the misconduct proceedings; a "list" of "circuit judges' misconduct" concluding that the "judge mistepped [sic] his boundaries;" excerpts from the Rules of Judicial Misconduct; copies of orders issued in the petitioner's appeal; copies of correspondence to the petitioner relating to his mental health; and an apparent copy of a page from a dictionary.

The petition for review is without merit. As demonstrated by Judge Selya's thorough review of the petitioner's proceedings, the record is devoid of any indication that the charged judicial officers exhibited bias, engaged in improper ex parte communications, or harbored any

illicit animus in connection with the petitioner's cases. To the contrary, the reviewed record reflected the magistrate and district judges' patient and impartial consideration of each of the petitioner's underlying claims. As the petition for review presents no information beyond the unsupported allegations presented originally, the complaint was appropriately dismissed as baseless pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).

Insofar as the complaint was also based exclusively on the petitioner's disagreement with the court's rulings, it was also aptly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). Lastly, as neither the appellate courts' orders denying the petitioner's motions to reinstate his case or the alleged delay in the petitioner's proceedings suggest judicial wrongdoing, these claims were also appropriately dismissed. See 28 U.S.C. § 352(b)(1)(A)(i).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints Nos. 01-08-90023 - 01-08-90028 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in black ink, appearing to read "Gary H. Went", is written over a horizontal line.

Gary H. Went, Secretary